

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS
OF 21 MARCH 2017 (NO. 4 OF 2017)
IN THE CASE 2016.V8 – HOLLAND**

As petitioned by:

the Minister of Infrastructure and the Environment in The Hague,
petitioner,
authorised representative: M. Schipper,
ILT/Shipping inspector,

versus

H.J.F. Z.,

the person concerned,
counsel: J.A. Hoekstra, LL.M.

1. The course of the proceedings

On 10 October 2016, the Maritime Disciplinary Court received a written petition for a disciplinary hearing of the case against the person concerned as the captain of the Dutch seagoing vessel Holland from M. Schipper, inspector ILT/Shipping. Eighteen appendices were attached to the petition.

The Disciplinary Court has notified the person concerned of the petition by letter (sent both by registered and ordinary mail), enclosing a copy of the petition with appendices, and has informed the person concerned of the right of appeal.

No statement of defence has been received from the person concerned.



The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 10 February 2017 at the offices of the Disciplinary Court in Amsterdam.

The ILT, the person concerned and his defence counsel were summoned to appear at the hearing of the Disciplinary Court.

An additional statement has been received from the person concerned.

The court hearing was held on 10 February 2017. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned appeared, represented by his counsellor.

2. The petition

In summarised form, the following forms the basis for the petition.

At approximately 12.15 hours local time on 9 May 2016, the Dutch seagoing vessel Holland ran aground in the Westergonden north of Terschelling. The person concerned was the ship's captain at the time.

The accusation against the person concerned is that the grounding was caused by his human error as officer of the watch, an error that could have been avoided by means of good seamanship, more specifically by more accurately determining the ship's position and thus holding a proper bridge watch.

The person concerned is charged with thus acting contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping, in conformity with Section 55a of the Dutch Seafarer's Act.



3. The position of the person concerned

In summarised form, the person concerned has argued that he was probably distracted whilst on watch by people talking on the bridge and that as a result of this (1) he ended up farther south than the course line shown in the chart after crossing the IT route, (2) he no longer regularly monitored his positions and navigated the ship in a routine manner, (3) he presumed at a given point in time that the ship was located to the north of the TG buoy, whereas it was in fact the Otto buoy and changed course to port, thinking that that was the direction of the approach buoy of the Stortemelk, but was in fact towards the Terschellinger Gronden.

It seems that post Brandaris, to which he had reported, had not checked his position and did not alert him to the dangerous course that he had taken. The navigating officer, who took over the watch from him, did not check the ship's position and chart it either.

4. The assessment of the petition

A. The statement of the person concerned attached to the petition (appendix 5 to the petition, pp. 17–19) and his additional statement contains – in concise form – the following information:

On 9 May 2016 the seagoing tugboat Holland was en route from Hamburg to Harlingen. The person concerned was the captain and he had the bridge watch until 12.00 (ship's time = UTC + 2). After handing over the watch to the navigating officer he remained – apart from a brief absence to use the toilet – on the bridge.

After crossing the IT route the position was determined at around 11:09 hours and the course was changed to 236°. After that he passed the Stolzenfels buoy to the north. At 11:55 hours he reported to Brandaris traffic centre that the ship was to the north of the TG buoy. This was in fact the Otto buoy, which he did not realise at the time. Brandaris reported that this



was understood and instructed him to report again on entering the Stortemelk. After that he changed course to 210° towards the Stortemelk approach.

Shortly afterwards the navigating officer came on duty. At that time he was writing in the ship's log. He realised at that point that he needed to go to the toilet. He told the navigating officer the ship's position by indicating it on the chart in the chart room. He gave the navigating officer the course of 210° towards the approach buoy of the Stortemelk. He then went to the toilet. After 3 or 4 minutes he returned to the bridge and, together with the navigating officer, looked on the radar at the approach buoy of the Stortemelk and the shipping lane buoys which were clearly visible on the radar.

At 12:15 the ship suddenly ran aground.

The depth was sounded and checked. No leaks were reported. Following an initial unsuccessful attempt, the ship was pulled free by a tugboat that evening. The ship continued on its voyage to Harlingen and moored there at 00.45 hours.

B. The ship's log (appendix 6 to the petition, pp. 20/21) shows the Holland's GPS positions at 10:40 hours and 11:09 hours on 9 May 2016. It is also noted that the ship passed the TG buoy at 11:55 hours and that the ship reported to Brandaris.

C. A photo of the sea chart used on board (appendix 7 to the petition, pp. 22) shows that the course was changed to 236° at 11:09 hours, after the traffic separation scheme had been crossed. A line was drawn on that course in the chart. This line ran to the north of the Stolzenfels buoy, the Otto buoy and the TG buoy in that order.

D. Based on the information in the ship's log, the sea chart used, the statement of the person concerned and the AIS positions of the Holland issued by the coastguard (appendices 11, 12A, 12B to the petition, pp. 26–33) the ILT has reconstructed in the chart the planned course line of the



route the person concerned thought he was sailing and the actual route sailed by the Holland (appendices 13, 14 and 15 to the petition, pp. 34–36). This shows the following.

A course of 160° was planned to cross the traffic separation scheme. After that a course of 236° was to be followed. The plan was for the ship to continue on a course of 236° up to the north of the TG buoy and then to change course to port to 210° towards the Zuider Stortemelk buoy.

In actual fact, the navigation was as follows. At around 11:11 hours (9:11 hours UTC) – after crossing the traffic separation scheme – the course was changed to a position more southerly than the planned route. After that a course of approximately 236° was followed. This shipping lane was also more southerly than the planned route and the route the person concerned thought he was sailing.

After passing the Stolzenfels buoy to the north, at approximately 11:45 hours the course was changed slightly to port and then slightly further to port at around 11:52 hours, when the ship was to the north of the Otto buoy. The ship then continued on that course ($\pm 216^\circ$) until it ran aground on the Westergronden.

The ship therefore turned to port at a position that was a good deal farther to the east than where the course change to 210° was planned and where the person concerned thought that he was located (to the north of the TG buoy).

E. At the hearing of 10 February 2017 the person concerned made the following additional statement.

I had been captain of the seagoing tugboat Holland since March 2016. I was very familiar with the shipping lane to the north of Terschelling.

During the voyage from Hamburg to Harlingen there were 17 people on board, twelve crew members and five passengers.

It was the morning of 9 May 2016, sunny weather, easterly wind veering to east-southeast, 3–5 Bft, calm sea and clear visibility.



During the course change at 11:09 hours – after crossing the traffic separation scheme – I took the GPS position and noted this on the chart. After that I did not take any more positions and chart them, more particularly not when I changed course at around 11:55 hours, after reporting to Brandaris, to 210° and not when I handed over the watch to the navigating officer either. I did however note in the ship's log that we were at the TG buoy, but I did not take the GPS position at that time.

I think that the navigating officer was very familiar with the area. I went with the navigating officer to the radar at the front right of the bridge and we viewed the buoy echoes there. I did not notice that the ship was not to the north of the TG buoy, which was what I thought. I told the navigating officer to continue on a course of 210°.

It has been put to me that it is stated in my ship's log that the route along which the course was continued of 236° was completed in 40 minutes and that the length of this route was 13.8 miles; I believed that the route continued up to the TG buoy. I will read the distance to the TG buoy on the radar. This results in a sailed speed of over 20 knots. It follows from the details that I had noted about the two routes previously sailed that these routes were sailed at a speed of approximately 12 knots.

I must have failed to notice the big difference in speed.

While crossing the traffic separation scheme and afterwards there were a number of crew members on the bridge, and it seems that I allowed myself to be distracted by the talking on the bridge.

After the grounding and refloating, the Holland was found not to have sustained any damage. There were no personal injuries. No environmental damage was caused.

In October 2016 I resigned as captain of the Holland. I did this on my own initiative. I have given up sailing.



5. The ruling of the Disciplinary Court

A. The findings of the Disciplinary Court based on the content of the documents referred to above and the statement of the person concerned are as follows.

At around 12:15 hours ship's time on 9 May 2016 the Dutch seagoing tugboat Holland ran aground in the Westergronden to the north of Terschelling. This grounding was caused by the change of course to port taken by the person concerned as captain and officer of the watch and maintained on the instructions of the person concerned by the navigating officer who took over the watch from him.

The fact that this could happen can be attributed to the person concerned not determining and charting the ship's position for a long period of time. For that reason he had a completely inaccurate image of the situation and did not notice that the Holland was not where he thought it was at the time of the course change or that he was heading for the Westergronden.

B. This shows that the person concerned failed to properly fulfil his duties as officer of the watch; in particular he failed to determine and chart the ship's position frequently enough. There was certainly sufficient reason to do this in the area to the north of Terschelling where the Holland was sailing. The grounding was caused by this negligence.

The Disciplinary Court makes reference to the provisions of the STCW-Code for the holding of a bridge watch, Chapter VIII – Section A-VIII/2 – Part 4-1 Performing the navigational watch – art. 25: During the watch the course steered, position and speed shall be checked at sufficient frequent intervals, using any available navigational aids necessary, to ensure that the ship follows the planned course.

The person concerned claims that he was distracted by other people on the bridge and the conversations they were holding. This is indicative of incorrect bridge resource management, for which the person concerned can



also be held accountable in his capacity of captain and officer of the watch. An officer of the watch must direct his full attention to the bridge watch. Everything that distracts him from this must be prevented or removed.

C. The conduct of the person concerned constitutes a violation of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: acting or failing to act on board as captain contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, the environment and shipping.

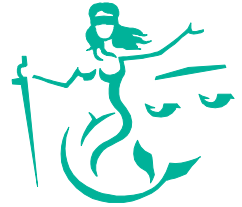
D. The person concerned has argued that Brandaris traffic centre did not check the Holland's position at the time of the report and did not give a warning that the ship was on a dangerous course. The person concerned also points out that the navigating officer did not check the ship's position either. As the person concerned himself understands, the actions of the Brandaris and the navigating officer – whatever the other merits of the case – do not absolve him of his own responsibility for his navigation. On handing over the watch the person concerned should have ensured that the navigating officer informed himself of the Holland's correct position.

6. The disciplinary measure

The Maritime Disciplinary Court judges that the person concerned failed seriously in his responsibilities as captain and officer of the watch, which resulted in the grounding. This placed the safety of the people on board, the ship and the environment in jeopardy.

In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate.

Given the fact that the person concerned is aware of his failings, that he has been seriously affected by what happened and resigned as captain, the Disciplinary Court sees good cause to impose the suspension of the navigation licence on an entirely conditional basis.



7. The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 5 to be well-founded;
- suspends the navigation licence of the person concerned for a period of two months;
- stipulates that this suspension will not be imposed unless the Disciplinary Court stipulates otherwise in a subsequent ruling based on the fact that the person concerned has once again behaved contrary to his duty of care as a good seaman in respect of the people on board, the vessel, its cargo, the environment or shipping prior to the end of a probationary period, which the Disciplinary Court hereby sets at two years;
- stipulates that the probationary period of the suspension shall commence on the date six weeks following the date of this ruling being forwarded.

Duly delivered by A.N. van Zelm van Eldik, LL.M., presiding judge, P.J. Gutteling and R.J.N. de Haan, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by the presiding judge in public session on 21 March 2017.

A.N. van Zelm van Eldik
presiding judge

E.H.G. Kleingeld, LL.M
secretary

An appeal against this ruling can be lodged within six weeks of the date of forwarding with the Dutch Trade and Industry Appeals Tribunal ('College van Beroep voor het Bedrijfsleven'), Prins Clauslaan 60, 2595 AJ The Hague, P.O. Box 20021, 2500 EA The Hague, the Netherlands.